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OFFICE OF THE SECRETARY

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January 6, 1994

BY HAND DELIVERY

Merrill Speigel, Esq.
Special Assistant to the Chairman
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

Re: Ex Parte Presentation
Coalition of Small System Operators
MM Docket No. 92-266

Dear Ms. Speigel:

On behalf of the Coalition of Small System Operators, thank you for meeting with Coalition representatives (Michael Pohl of Douglas Communications, Vincent King of ACI Management, Inc., Roy Hayes of Bay Cable, and Jacqueline Cleary and me of Hogan & Hartson) yesterday regarding the regulation of small systems' rates. The following summarizes our discussion regarding the urgency of small system relief from the potentially overwhelming burdens of rate regulation. We note that we did not submit this letter yesterday because our meeting began at 4:40 p.m., and we did not have time to prepare the letter before the Commission closed at 5:30 p.m.

We believe that the net income analysis proposed by the Coalition provides a simple, workable means to comply with the statutory mandate to limit administrative burdens on small systems. If the Commission has concerns about the net income analysis, we suggest that there is some flexibility in the manner in which it may be applied. For example, the Coalition continues to believe that small systems' rates should be deemed to be reasonable under the net income analysis if revenues do not exceed costs by more than 15.5 percent. However, if the Commission wishes to study the reasonableness of the 15.5 percent profit margin, it could implement the net

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income analysis during an interim period by deeming small system rates reasonable if revenues do not exceed costs (*i.e.* if the system is not making a profit).

Also, if the Commission wishes to garner more information with respect to cable operators' costs, it could implement the net income analysis on an interim basis for small system operators while the Commission conducts a cost survey. We note that the form for the cost survey was prepared by the FCC's staff several months ago, but it was never sent out to cable operators. The Coalition continues to believe that such a cost survey would justify existing rates, especially for small operators with high operating costs.

The density factor also is critical to encourage the continued expansion of cable service into rural areas. The density analysis that we provided to you yesterday (copy enclosed) demonstrates the profound differences in per subscriber costs for systems with low, medium and high densities. Again, if the Commission wishes to study further the impact of density on costs, it could -- as an interim measure -- apply the density factor only to systems with less than 1,000 subscribers. We submit that there is ample evidence in the record to support the application of a density factor to these small systems.

If there is any concern on the Commission's part that small system relief will benefit large operators with some systems with less than 1,000 subscribers, we suggest that the Commission could limit the application of small system relief to MSOs with an <u>average</u> system size of less than 1,000 subscribers per franchise area. Unlike a cap on the total number of subscribers that a "small system operator" may serve, the 1,000 subscriber average would not deter the construction and/or acquisition of new small systems by existing small system operators.

We enclose for your information a copy of the chart prepared by NCTA, demonstrating the large percentage of headends in the U.S. which represent only a very small percentage of the subscribers in the U.S.

Copies of this letter are being submitted to the Secretary's office pursuant to Section 1.1206(a)(2) of the Rules. Also submitted to the Secretary's

office are copies of all materials that we provided to you at our meeting yesterday (and last week in preparation for our meeting) which are not already in the referenced docket.

Respectfully submitted,

HOGAN & HARTSON

By Gardner F. Gillespie
Gardner F. Gillespie
Jacqueline P. Cleary

Attorneys for the Coalition of
Small System Operators

cc: Mr. William Caton (w/enclosures, by hand)

SYSTEMS AND SUBSCRIBERS BY NUMBER OF SUBSCRIBERS IN SYSTEM

SUBSCRIBERS IN SYSTEM	SYSTEMS	PERCENT OF TOTAL SYSTEMS	BASIC SUBS.	PERCENT OF TOTAL BASIC SUBS.
50,000 or More	221	1.99	21,538,463	40.35
20,000 – 49,999	417	3.76	12,834,441	24.05
10,000 – 19,999	507	4.57	7,204,259	13.50
5,000 – 9,999	642	5.80	4,544,524	8.51
3,500 – 4,999	406	3.66	1,703,013	3.19
1,000 – 3,499	1,896	17.11	3,616,097	6.77
500 – 999	1,421	12.82	1,017,620	1.91
250 – 499	1,500	13.54	536,734	1.01
249 or Fewer	2,957	26.68	380,323	0.71
Not Available	1,116	10.07	—	0.00
TOTAL	11,083	100.00	53,375,474	100.00

SOURCE: Warren Publishing, Inc., *Television & Cable Factbook*, Cable & Services Volume No. 61 (Services–Part II), 1993, p. I–69. Data as of November 1, 1992. Percents rounded off.

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December 28, 1993

BY HAND DELIVERY

Merrill Speigel, Esq.
Special Assistant to the Chairman
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

Re: Coalition of Small System Operators

Dear Ms. Speigel:

Pursuant to our telephone conversation last week, I enclose for your review: (i) a chart describing the members of the Coalition of Small System Operators; (ii) a brief summary of the most important rate regulation issues briefed by the Coalition in various filings at the FCC; (iii) and a letter to the Commission explaining in more detail the Coalition's proposed net income analysis and density adjustment factor.

If you have any questions regarding these materials, or if you wish to review any of the Coalition's actual filings, please feel free to call me. I look forward to meeting with you on January 5.

Sincerely,

Gardner F. Gillespie

Gardner F. Gillespie

Enclosure

I. Operational costs are higher for small system operators and revenue opportunities are more limited

A. Small system operators serving rural areas must construct more miles of plant per subscriber because there are fewer homes per mile than in metropolitan areas. Based on the additional miles of plant, per subscriber construction costs are higher and maintenance costs are higher (more technicians are required to service the greater area covered by the small system's plant). The impact of low density on a cable system's operating margin cannot be overstated. For example, assuming a 60 percent penetration rate for a system with a density of 25 homes passed per mile and the same penetration rate, the cost of building one mile of plant (about $15,000) would be $1,000 per subscriber. For a system with 40 homes per mile and the same penetration rate, the cost per subscriber would be $625. For a metropolitan system with 150 homes per mile and the same penetration rate, the cost of building the same mile of plant would be $166 per subscriber.

B. Headend costs for small system operators generally are substantially higher due to the far flung nature of the systems, which requires the utilization of multiple headends. The higher headend costs stem not only from higher equipment costs, but also from much higher overhead for routine maintenance and technical changes that must be effected at the headend.

For example, one small system operator has 437 headends serving 103,090 subscribers (an average of 236 subscribers per headend). The cost to add a single channel of programming to a headend is approximately $1,080. The cost to add the same channel of programming to all of this small system operator's headends would be $471,960. This striking difference between the amount that it would cost a large system operator with 103,090 subscribers served from a single headend to add a channel of programming versus the cost to an operator serving the same number of subscribers spread over 437 systems becomes even more pronounced when it is calculated on a per subscriber basis. In this scenario, the large system operator's headend cost to add a channel would be about a penny per subscriber. The small system operator's headend costs per subscriber to add the channel would be about $4.57 per subscriber. The Commission's existing benchmarks simply do not account for this type of substantial cost differential between small and large systems.

C. Programming costs are higher, as small systems generally do not qualify for programming discounts that are available to large operators.

D. Administrative burdens and costs of complying with rate regulation are much greater for small system operators. The current

regulatory structure requires preparation of Form 393s for each franchise area where a system is subject to regulation. The Commission estimated that it would take approximately 40 hours of work to complete a Form 393. For the small system operator with hundreds of franchise areas, each serving a small number of subscribers, the per subscriber cost of preparing hundreds of Form 393s is enormous. The average member of the Coalition of Small System Operators was required to fill out 219 Form 393s.

In addition, because most small systems keep their books on a consolidated basis (either companywide or integrated system by system). the allocation required to prepare Form 393s for each franchise area is arbitrary and extremely labor-intensive.

Administrative costs of compliance with signal carriage requirements also have disproportionately affected small operators. Again, because of the large number of headends, each serving a small number of subscribers, the per subscriber cost of compliance has been much higher for small systems. The administrative burdens associated with signal carriage were overwhelming for many small operators. For example, one small system operator had to send 157 signal deficiency notices to broadcast stations (after testing to determine which station's signals were inadequate). The same operator sent 324 notices to broadcasters describing channel line-ups. It concluded (at least temporarily) approximately 120 sets of retransmission consent agreements between June and October 6, 1993. The office that handled administrative compliance with signal carriage rules for this operator has only nine employees This operator had to hire temporary employees to assist with signal carriage compliance.

E. Small system operators generally have more limited opportunities to generate unregulated revenues than larger operators. For example, it is not generally economically feasible for a small system operator to acquire the equipment necessary to generate local advertising revenues because the operator would not be able to recoup its investment from the small number of subscribers served by a single headend. Small system operators' ability to offer pay per view and other premium services is also limited due to high equipment costs and limited channel capacity.

II. The Net Income Analysis

In recognition that the rates charged by small cable systems were not the rates that prompted congress to pass the 1992 Cable Act, the Coalition of Small System Operator has proposed adoption of a Streamlined net income analysis to determine whether small systems' rates are

reasonable. Under the net income analysis, small system operators (*i.e.* those with systems serving less than 1,000 subscribers in a given franchise area) compare their net income to their gross revenues on a systemwide basis or, on a companywide, consolidated basis (depending upon how the operator kept its books as of April 3, 1993). If the operator's net income is less than 15.5 percent of gross revenues, the operator's rates are deemed to be reasonable, and further regulatory analysis is necessary. 1/ The net income analysis gauges the reasonableness of small systems' rates only as of September 1, 1993. It does not address the reasonableness of rates on a going forward basis. This analysis provides a simple means to accomplish the Congressional directive to reduce administrative burdens on small systems. For more detailed discussion of the net income analysis, *see* attached letter to William H. Johnson, dated November 10, 1993.

III. The Density Factor

Benchmarks should be adjusted upward for systems serving low density areas. The amount that a benchmark rate should be adjusted based on the density factor is reached by assuming straight line depreciation over twelve years and construction costs of $15,000 per mile of plant. Based on these conservative assumptions, a system serving 12 subscribers per mile would have to recover $104.00 annually for each mile of plant ($8.68 per month from each subscriber) to cover the depreciation for these construction costs. A system with 37.75 subscribers per mile (the average of the systems in the FCC's database that was used to establish the benchmarks) would have to recover only $2.76 per month from each subscriber to cover depreciation cost for distribution plant. The density factor would permit upward adjustment of the benchmark rate by the amount that the low density system's monthly, per-subscriber depreciation actually exceeds depreciation for the average density system in the Commission's database. Thus, the system serving 12 subscribers would be entitled to add $5.92 per subscriber per month to the benchmark because it must recover this amount from subscribers each month above the amount that the system serving 37.75 subscribers must recover to meet its depreciation expense for distribution plant. *See id.* at 15.

1/ The 15.5 percent figure was derived by Arthur Andersen Economic Consultants based on a review of net income margins of other, similar businesses. Based on this review, Arthur Andersen deemed the 15.5 percent net income margin to be unquestionably reasonable.

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November 10, 1993

William H. Johnson
Deputy Chief
Mass Media Bureau
Federal Communications Commission
1919 M Street N.W. - Room 314
Washington, D. C. 20554

Larry Miller
Assistant Chief
Video Services Division
Mass Media Bureau
Federal Communications Commission
1919 M Street N.W. - Room 702
Washington, D. C. 20554

Hugh Boyle
Cable Services Division
Federal Communications Commission
2033 M Street N.W. - Room 802
Washington, D. C. 20554

Re: **MM Docket 92-266**

Dear Messrs. Johnson, Miller, and Boyle:

On behalf of the Coalition of Small System Operators, I want to thank you for the time you took to meet with us on Monday. The meeting helped us better understand your concerns, and we would like to further address them here.

The Coalition consists of about 25 operators of small cable systems serving 1.2 million customers. The vast majority of these subscribers are served

by systems of less than 1,000 subscribers. In all, the Coalition members operate about one-quarter of all of the cable headends in the country.

As you are aware, we have proposed two primary alternatives for small system relief. These are the Net Income Analysis and the Density Factor add-on to the benchmark. These approaches are not mutually exclusive. At this point we can all agree that there is no perfect answer to administrative relief for small systems. Any approach can be argued either to be too simplistic or too burdensome, if not both. By addressing your major issues on the Net Income Analysis, we believe we can make it acceptable for very small systems (less than 1,000) which represent only 3.6 percent of cable subscribers nationally. 1/ Yet these systems also represent over 50 percent of all cable head-ends. 2/ Simplifying rate regulation for small systems can have an enormous impact on the total administrative costs for cable operators, franchising authorities, and the FCC. Yet relatively few subscribers will be impacted. We believe the overall cost-benefit analysis of small system relief is unquestionably positive. The Density Factor could be applied where the Net Income Approach fails or for small head-ends with over 1,000 customers.

Net Income Analysis

- What is the theory behind the net income approach?

The net income approach is designed to free from further rate regulation any small systems which can simply demonstrate that their overall revenues do not exceed their overall expenses by an excessive amount. The approach compares the system's total revenues (including unregulated revenues) to the system's total expenses: operating expenses, interest, and depreciation (excluding amortization). If the comparison shows that revenues do not exceed these expenses by an amount that is unquestionably reasonable, the operator's rates themselves are determined to be reasonable. Although there are certainly refinements that could be made to the analysis, we emphasize that the object is to create a simple analysis. And we note that all revenues are included, including revenues that would be unregulated under the 1992 Cable Act.

1/ Implementation of Sections of the Consumer Protection and Competition Act of 1992, Rate Regulation, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, FCC 93-389 (rel. Aug. 10, 1993), Separate Statement of Commissioner Ervin S. Duggan at 1.

2/ Id. at Concurring Statement of Commissioner Andrew C. Barrett at 6.

As in any simplified approach, there may be corrections that could be made on either side. In this regard, our proposal is not wholly dissimilar from the simplified analysis used by the Commission in analyzing pole attachment rates. The net income approach is even simpler in view of the fact that (1) there are many more small cable systems in the country than the investor-owned utilities that are subject to the Pole attachment Act; 3/ (2) the cable systems at issue (those with less than 1,000 customers) are smaller by many orders of magnitude than the utilities subject to the Pole Attachment Act; and (3) cable systems do not maintain any Uniform System of Accounts.

- What is the relationship between net income and reasonable rates?

A traditional cost of service analysis takes into consideration operating expenses, depreciation, taxes, and a return on net assets which factors in the cost of the capital structure – interest and equity return. Up to the point of break-even, the Net Income Analysis is essentially a primitive cost-of-service approach. All that is considered in the Net Income Analysis is operating expenses, depreciation, and interest. If the system's regulated and unregulated revenue does not exceed by some unquestionably reasonable percentage its overall expenses, the Net Income Approach presumes that the rates for regulated services must be themselves reasonable. To the extent that rates are considered reasonable when they are related directly to expenses, the Net Income Approach simply compares the two. Each of the expenses considered is a real cost of doing business.

The primary difference between the Net Income Analysis and the traditional Cost-of-Service Analysis is that the former attempts to measure a conservatively reasonable return solely by looking to pre-tax income as related to expenses and the latter looks to after-tax income as a percentage of the "rate base." There is no requirement that the FCC make all decisions as to rate reasonableness based on traditional cost-of-service principles. And, indeed, the Commission has based its primary rate regulation on a wholly different concept – rate benchmarks. Because determining a rate base can be complicated and is extremely contentious, we have proposed the Net Income Approach as a more simple and less contentious alternative.

3/ Cooperatives and municipally-owned utilities are exempted from the Pole Attachment Act.

- How do we reconcile differing depreciation schedules that may be used by small system operators?

We believe that so long as the depreciation methods meet the requirements of GAAP, they should be acceptable.

- At what level of consolidation should the Net Income Analysis be applied?

We believe it must be applied at the level where books were kept on April 1, 1993. The next question is, obviously, how does this relate to the circumstances in a particular franchise within this entity? The answer is that it won't exactly reflect those circumstances; however, no amount of allocation of expenses to the franchise level will correct this situation. Allocations are inherently arbitrary and cannot possibly reflect the true operating environment of a particular franchise. It should also be noted that any cost-of-service showing will have these same limitations.

- What is the basis of the 15.5 percent of revenue figure proposed with the Net Income Analysis?

We believe it is beyond serious dispute that a small system's rates are reasonable if they do not cover the system's operating expenses, depreciation, and interest expense. But we also believe that all reasonable people must agree that the rates are reasonable if they earn only some minimal income above these expenses. The figure proposed by the Coalition of 15.5 percent of revenue is intended to be a non-controversial figure. If the Commission has some basis for selecting some other number as more satisfactory, it may do so.

Arthur Andersen's Anthony Kern has analyzed a total of 562 profitable companies across a range of industrial classifications. After review of these companies and eliminating companies with extraordinarily high income, he determined that the weighted average net income margin (revenues, less interest, depreciation, amortization, taxes, and operating expenses) for these companies was 15.5 percent. In reaching this determination for these companies, he subtracted amortization and taxes from revenues. The Net Income Analysis for small cable systems, on the other hand, does not treat taxes or amortization as expenses. The result is that a small cable system under our Net Income Analysis that shows a 15.5 percent net income as a percentage of total revenues will have considerably less revenue than a similarly situated industrial company in Mr.

Kern's study. We believe the 15.5 percent number is thus extremely conservative and may be relied upon by the Commission.

- How should we handle "excess" acquisition costs and the related interest?

It should first be noted that this is not a large problem in small systems with less than 1,000 subscribers. High acquisition prices in the cable industry have typically been driven by customer growth potential and the opportunity to enhance revenues through advanced services like pay-per-view, advertising, etc. These opportunities don't exist to a significant degree for small systems.

Even given these factors, we have excluded amortization of intangibles from the analysis. There is ample support in traditional cost-of-service showings for allowing the interest component for disallowed capital expenditures. However, in this case, the most important point is that these costs would not be material. We are not aware of any allegations -- either in Congress or before the FCC -- that small cable systems have been traded at unreasonable values or that subscribers have been abused by "trafficking" in these systems.

A related issue is the level of interest expense as driven by the debt-to-equity ratio. First of all, the small systems' capital structures were established pre-regulation. They have not been juggled or "gamed" to manipulate the regulatory system. Second, the banking industry has tightened its lending limits to such an extent that extremely high debt-to-equity ratios are almost impossible today. A third consideration is that while the Net Income Analysis only factors in interest expense, in reality equity is the more expensive component of a capital structure. The Net Income Analysis is conservative in that it only recognizes the interest component, and this only to the extent actually incurred. A true cost-of-service showing would allow a return on the equity component also. We believe that by including only the expenses that it does, the Net Income Approach is extremely conservative.

- How should subsequent channel additions be handled?

We note that the Net Income Approach would only be used to justify a small system's rates as of April 5, 1993, the date of the Commission's first rate freeze. Rates justified in this manner would be subject generally to the Commission's price cap standards, including rules on passing through external costs.

When a small system then adds to the number of channels offered, we suggest an approach similar to the approach proposed by the Commission for larger systems that add channels. We propose that the system be permitted to pass through the actual increase in programming costs the operator incurs. Instead of also raising its permitted rates based solely on the number of new channels, 4/ we suggest that the small operators be allowed to pass through the actual cost (amortized according to GAAP) of any associated required headend investment. These costs are significant on a per-subscriber basis for small operators. 5/ And by passing through the actual related costs directly, the small operators would continue to be relieved of the administrative burden of making benchmark calculations for their systems.

We note that the FCC is also considering whether to allow other upgrading costs to be passed through as an "external cost," and whether to permit a return of programming expenses. We believe the small systems should be permitted to follow the general decisions reached by the Commission.

- How do we get comfortable with the expenses in the analysis?

We believe that in addressing the questions raised by the Staff, we have addressed all areas for material manipulation of the results. This is where the trade-offs begin. To get into more detail would negate the stated objective of reducing the administrative burden on small systems. Sworn affidavits from officers and, perhaps, some random audits could give further comfort in these areas.

4/ The FCC has proposed to allow systems to use new benchmarks for the increased number of channels. Although the per-channel amount decreases as the number of channels increases under the benchmarks, the overall permitted revenue from regulated services increases on the order of 10-15 cents a channel. For example, under the benchmarks, if a cable system with 10,000 or more subscribers increases the number of regulated channels from 30 to 40 (assume the number of satellite channels increases from 20 to 30), the rate per channel decreases from $0.693 to $0.559, while the overall permitted revenue increases from $20.79 to $22.36 – an increase of 15.7 cents per channel.

5/ For example, one small system spent $76,800 to add 64 new must carry channels, or $1200 per channel. For a system of 1,000 subscribers, this cost would be $12 per subscriber. See Comments of Coalition of Small System Operators in MM Docket No. 92-266, August 31, 1993.

Density Factor

While this didn't receive much attention in our discussions, we want to restate the importance to us of this approach. Density is the most critical economic factor in rural systems. The Coalition members have brought cable service to some extremely low-density areas. We are only asking that rural systems be allowed to recover their relatively high capital investment. As detailed in the Coalition's Petition for Reconsideration in MM Docket 92-266 (filed June 21, 1993), density has a dramatic impact on system profitability. We are asking that a portion of this impact be allowed to be reflected in the benchmark approach to avoid lengthy cost-of-service showings.

We believe that the cost estimates submitted by Arthur Andersen's Anthony Kern provide a solid basis for calculating a density factor. 6/ You may note from his Declaration that his estimates are based on his work with nearly 6,000 cable systems.

Please don't hesitate to contact me if I can be of further assistance.

Sincerely,

Gardner F. Gillespie

cc: Maureen O'Connell
Lisa Smith
John C. Hollar
Docket MM 92-266

6/ See the Coalition's Supplement to Petition for Reconsideration, MM Docket No. 92-266, filed on July 20, 1993.

EXHIBIT 1

NAME OF OPERATOR	TOTAL SUBS	TOTAL COMM. UNITS	TOTAL STATES SERVED	TOTAL HEADENDS	HEADENDS WITH LESS THAN 1,000 SUBS.
Douglas Communications Corp. II	103,090	494	13	437	428
Galaxy Cablevision	54,887	200	6	129	112
MW1/USA Cablesystems, Inc.	37,334	484	16	443	443
Vantage Cable Associates, L.P.	30,737	126	7	126	123
Triax Communications Corp.	326,052	1,075	16	444	361
Buford Television, Inc.	77,206	260	8	168	154
Classic Cable	29,904	78	5	73	65
Midcontinent Media, Inc.	72,502	174	4	170	162
Star Cable Associates	60,279	150	6	62	33
Leonard Communications, Inc.	61,500	226	9	125	110
Phoenix Cable, Inc.	26,900	58	8	37	25
Harman Cable Communications	32,500	29	6	22	15
ACI Management, Inc.	26,000	125	8	45	39
Frederick Cablevision	41,427	21	1	9	3
Fanch Communications/ Mission Cable Co., L.P.	189,603	514	13	306	331
MidAmerican Cablesystems, L.P.	12,173	101	5	81	80
Rigel Communications	10,500	31	2	31	29
Horizon Cablevision, Inc.	23,347	81	1	16	6
Community Communications, Co.	12,167	35	2	28	28
Balkin Cable	6,758	10	1	29	4

FOR SYSTEMS WITH FEWER THAN 1,000 SUBSCRIBERS

NAME OF OPERATOR	AVERAGE SUBS.	AVERAGE HOMES PASSED PER MILE	AVERAGE MILES PLANT	AVERAGE ACTIVATED CHANNELS	AVERAGE SUBS. PER MILE
Douglas Comm. Corp. II	191	40	8	16	24
Galaxy Cablevision	396	37	19	28	20
MW1/USA Cable Systems, Inc.	84	29	7	21	12
Vantage Cable Associates, L.P.	221	45	7.23	21	30
Triax Comm. Corp.	364	39	15	22	25
Buford Television, Inc.	322	24	29	24	11
Classic Cable	331	51	10	25	39
Midcontinent Media, Inc.	240	57	5.85	16	41
Star Cable Associates	429	28	32	26	13.4
Leonard Comm., Inc.	252	40	9.6	19.9	26
Phoenix Cable, Inc.	313	24.4	24.6	18	12.7
Harman Cable Communications	410	47	8.8	21	46.9
ACI Management, Inc.	426	21.3	42.3	25	10
Frederick Cablevision, Inc.	511	33.5	22.3	40	32.9
Fanch Communi-cations, Inc./Mission Cable Co., L.P.	462	40.44	10.64	28	24.1
MidAmerican Cablesystems Limited Partnership	150	49	6.2	19.4	24.2
Rigel Communi-cations, Inc.	275	15	5	18	10.5
Horizon Cablevision, Inc.	507	34	26	32	20
Community Communications Co.	217	27.2	20.2	15	17
Balkin Cable	550	49	22	37	25

HOGAN & HARTSON

MEMORANDUM

January 5, 1994

TO: Merrill Spiegel

FROM: Gardner F. Gillespie
Jacqueline P. Cleary

RE: Congressional Calls for Small System Relief

We have taken the liberty of collecting various letters from members of Congress to the FCC urging small system relief. At least 62 members of the House of Representatives and 39 Senators to this point have written letters requesting special rate treatment for small cable system operators. A list of the members of Congress submitting these letters as well as copies of the letters (taken from the Commission's congressional file) are attached.

House of Representatives

Michael Andrews	Texas
Bill Archer	Texas
Bill Baker	California
Richard Baker	California
Joe Barton	Texas
James H. Bilbray	Nevada
Michael Bilirakis	Florida
Thomas J. Bliley	Virginia
Rick Boucher	Virginia
John Bryant	Texas
Dan Burton	Indiana
Dave Camp	Michigan
Bob Carr	Michigan
Jim Chapman	Texas
Ronald Coleman	Texas
Michael D. Crapo	Idaho
E de la Garza	Texas
Jay Dickey	Arkansas
John T. Doolittle	California
Chet Edwards	Texas
Bill Emerson	Missouri
Anna G. Eshoo	California
Jack Fields	Texas
Martin Frost	Texas
Pete Geren	Texas
Paul E. Gillmor	Ohio
Ralph M. Hall	Texas
Mel Hancock	Missouri
Joe Hefley	Colorado
Maurice D. Hinchey	New York
Amo Houghton	New York
Eddie Bernice Johnson	Texas
Sam Johnson	Texas
Paul E. Kanjorski	Pennsylvania
Greg Laughlin	Texas
Richard H. Lehman	California
Frank McCloskey	Indiana
Jim McCrery	Louisiana
Alex McMillan	North Carolina
Gillespie V. Montgomery	Mississippi
John T. Myers	Indiana
Jim Nussle	Iowa
Michael G. Oxley	Ohio

J.J. Pickle	Texas
Earl Pomeroy	North Dakota
Tom Ridge	Pennsylvania
Pat Roberts	Kansas
Bill Sarpalius	Texas
Ike Skelton	Missouri
Lamar Smith	Texas
Olympia J. Snowe	Maine
Floyd Spencer	South Carolina
Charles Stenholm	Texas
Ted Strickland	Ohio
Bob Stump	Arizona
James Talent	Missouri
Charles H. Taylor	North Carolina
Frank Tejeda	Texas
Craig Thomas	Wyoming
Tim Valentine	North Carolina
Barbara F. Vucanovich	Nevada
Charles Wilson	Texas

Senate

Jeff Bingaman	New Mexico
John Breaux	Louisiana
Hank Brown	Colorado
Conrad Burns	Montana
Dan Coats	Indiana
Kent Conrad	North Dakota
Larry E. Craig	Idaho
Tom Daschle	South Dakota
Bob Dole	Kansas
Byron L. Dorgan	North Dakota
Dave Durenberger	Minnesota
J. James Exon	Nebraska
Lauch Faircloth	North Carolina
Russ Feingold	Wisconsin
Tom Harkin	Iowa
Jesse Helms	North Carolina
John Glenn	Ohio
Slade Gorton	Washington
Chuck Grassley	Iowa
Judd Gregg	New Hampshire
James M. Jeffords	Vermont

Tim Johnson	South Dakota
Nancy Landon Kassebaum	Kansas
Dirk Kempthorne	Idaho
John Kerry	Massachusetts
Herb Kohl	Wisconsin
Trent Lott	Mississippi
John McCain	Arizona
Sam Nunn	Georgia
Bob Packwood	Kansas
Larry Pressler	South Dakota
Richard Shelby	Alabama
Alan Simpson	Wyoming
Bob Smith	New Hampshire
Arlen Specter	Pennsylvania
Ted Stevens	Alaska
Strom Thurmond	South Dakota
Malcolm Wallop	Wyoming
Paul Wellstone	Minnesota

COMPARISON OF REGULATORY BURDENS FOR OPERATOR WITH ONE SYSTEM SERVING 20,000 SUBSCRIBERS AND OPERATOR WITH 40 SYSTEMS, EACH SERVING 500 SUBSCRIBERS

Description of Cost/Undertaking	Cost/Burden For One Large System	Cost/Burden For 40 Small Systems
Number of 393s required to be prepared	1	40
Number of hours required to complete Form 393s 1/	40	1,600
Number of annual regulatory filings 2/	10	400
Number of channels to be added to system based on new must carry requirements 3/	1	40
Headend cost of adding must carry signals 4/	$1,800	$72,000
Number of must carry notices required to be sent to television broadcast stations under new must carry rules 5/	7	280

1/ Members of the Coalition of Small System Operators estimate that, under deregulation, approximately 10 annual regulatory filings were required per system. *See* Comments of Coalition of Small System Operators, MM Docket No. 92-266, filed January 27, 1993, at p. 4.

2/ The FCC estimates that the average time required to complete a Form 393 is 40 hours. *See* Instructions to FCC Form 393, page 1. Of course, because Form 393s are required to be completed for each franchise area, small system operators with sprawling rural systems must often complete multiple 393s for a given integrated system serving multiple franchise areas.

3/ Although the Coalition is not aware of any study to determine the average number of must carry channels that were required to be added to cable systems last June, an informal survey of members of the Coalition of Small System Operators indicated that several members were required to add an average of one television broadcast station per headend. *See* Comments of Coalition of Small System Operators, MM Docket No. 92-266, filed January 27, 1993, at p. 16.

4/ Members of the Coalition of Small System Operators estimate that the headend cost to add a single channel of programming is approximately $1,800. *See* comments of Coalition of Small System Operators, MM Docket No. 92-266, filed January 27, 1993, at p. 4. If anything, this cost should be higher for small, rural systems because their technicians must cover substantial distances from one headend to another to engineer the new channel at multiple headends.

5/ Based on an informal survey of members of the Coalition of Small System Operators, although the number of notices required to be sent to broadcast stations varied, the average number of notices per headend was approximately 7. *See* Comments of Coalition of Small System Operators, MM Docket No. 92-266, filed January 27, 1993, at p. 16.

COMPARISON OF PER SUBSCRIBER COSTS AND BURDENS IN LARGE SYSTEM WITH 20,000 SUBSCRIBERS AND SMALL SYSTEM WITH 200 SUBSCRIBERS

Description of expense/undertaking	Large System Per Subscriber Cost/Burden	Small System Per Subscriber Cost/Burden
Number of annual regulatory filings 1/	one per 2,000 subscribers	one per 20 subscribers
Add a single channel of programming 2/	$.09	$9.00
Time Required for Preparation of Form 393 3/	.12 minutes	12 minutes

1/ A member of the Coalition of Small System Operators estimated that it was required, under deregulation, to prepare and file approximately 4,250 separate reports each year with different government entities (e.g. copyright Statements of Account, CLI reports, various CARS applications) for its 416 systems. This yields an average of about 10 reports per headend.

2/ Members of the Coalition of Small System Operators estimate that the headend cost to add a single channel of programming is approximately $1,800. *See* Comments of Coalition of Small System Operators, MM Docket No. 92-266, filed January 27, 1993, at p. 4. If anything, this cost should be higher for small, rural systems because their technicians must cover substantial distances from one headend to another to engineer the new channel at multiple headends.

3/ The FCC estimates that the average time required to complete a Form 393 is 40 hours. *See* Instructions to FCC Form 393, page 1. Of course, because Form 393s are required to be completed for each franchise area, small system operators with sprawling rural systems must often complete multiple 393s for a given integrated system serving multiple franchise areas.

Comparison of Construction Cost per Subscriber for Systems with Low, Medium and High Density

	AVERAGE												
Construction Cost Per Mile 1/	$15,000	$15,000	$15,000	$15,000	$15,000	$15,000	$15,000	$15,000	$15,000	$15,000	$15,000	$15,000	$15,000
Subscribers Per Mile	10	15	20	25	30	35	37.75	40	45	50	55	60	65
Construction Cost Per Mile Per Subscriber	$1,500	$1,000	$750	$600	$500	$429	$397	$375	$333	$300	$273	$250	$231
Percentage Difference From Average	278%	152%	89%	51%	26%	8%	0%	-6%	-16%	-25%	-31%	-37%	-42%
Depreciation Cost Per Mile Per Month 2/	104	104	104	104	104	104	104	104	104	104	104	104	104
Depreciation Cost Per Mile Per Subscriber Per Month	$10.40	$6.93	$5.20	$4.16	$3.47	$2.97	$2.75	$2.60	$2.31	$2.08	$1.89	$1.73	$1.60
Percentage Difference From Average	278%	152%	89%	51%	26%	8%	0%	-6%	-16%	-25%	-31%	-37%	-42%
Dollar Difference From Average	$7.67	$4.18	$2.45	$1.41	$0.72	$0.22	$0.00	($0.15)	($0.44)	($0.67)	($0.86)	($1.02)	($1.15)

1/ 37.75 subscribers per mile is the average from the FCC database that was used to develop the rate benchmarks. The average member of the Coalition of Small System Operators has 23 subscribers per mile. Several members of the Coalition have average subscriber densities of 10 to 14 subscribers per mile.

2/ Assumes average life of 12 years.